

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: William Fahey

1 Reuben Yeroushalmi (SBN 193981)
reuben@yeroushalmi.com
2 Peter T. Sato (SBN 238486)
peter@yeroushalmi.com
3 **YEROUSHALMI & YEROUSHALMI***
4 An Association of Independent Law Corporations
9100 Wilshire Boulevard, Suite 240W
5 Beverly Hills, California 90212
Telephone: (310) 623-1926
6 Facsimile: (310) 623-1930

7 Attorneys for Plaintiff,
8 CONSUMER ADVOCACY GROUP, INC.

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,

14 Plaintiff,

15 v.

16 GROCERY OUTLET, INC. DBA
17 GROCERY OUTLET BARGAIN
18 MARKET, a California Corporation;
and DOES 1-10,

19 Defendants.
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CASE NO. 19STCV41037

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
2 Defendants GROCERY OUTLET, INC. DBA GROCERY OUTLET BARGAIN MARKET, and
3 DOES 1-10 as follows:

4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
6 organization qualified to do business in the State of California. CAG is a person within
7 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
8 as a private attorney general, brings this action in the public interest as defined under
9 Health and Safety Code Section 25249.7, subdivision (d).
- 10 2. Defendant GROCERY OUTLET, INC. DBA GROCERY OUTLET BARGAIN
11 MARKET ("GROCERY OUTLET") is a California Corporation qualified to do business
12 and doing business in the State of California at all relevant times herein.
- 13 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
14 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
15 complaint to allege their true names and capacities when ascertained. Plaintiff is
16 informed, believes, and thereon alleges that each fictitiously named defendant is
17 responsible in some manner for the occurrences herein alleged and the damages caused
18 thereby.
- 19 4. At all times mentioned herein, the term "Defendants" includes GROCERY OUTLET,
20 and DOES 1-10.
- 21 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
22 times mentioned herein have conducted business within the State of California.
- 23 6. Upon information and belief, at all times relevant to this action, each of the Defendants,
24 including DOES 1-10, was an agent, servant, or employee of each of the other
25 Defendants.
- 26 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
27 Defendants was a person doing business within the meaning of Health and Safety Code
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1 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
2 employees at all relevant times.

3 JURISDICTION

- 4 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
5 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
6 those given by statute to other trial courts. This Court has jurisdiction over this action
7 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
8 violations of Proposition 65 in any Court of competent jurisdiction.
- 9 9. This Court has jurisdiction over Defendants named herein because Defendants either
10 reside or are located in this State or are foreign corporations authorized to do business in
11 California, are registered with the California Secretary of State, or who do sufficient
12 business in California, have sufficient minimum contacts with California, or otherwise
13 intentionally avail themselves of the markets within California through their manufacture,
14 distribution, promotion, marketing, or sale of their products within California to render
15 the exercise of jurisdiction by the California courts permissible under traditional notions
16 of fair play and substantial justice.
- 17 10. Venue is proper in the County of Los Angeles because one or more of the instances of
18 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
19 because Defendants conducted, and continue to conduct, business in the County of Los
20 Angeles with respect to the consumer product that is the subject of this action.

21 BACKGROUND AND PRELIMINARY FACTS

- 22 11. In 1986, California voters approved an initiative to address growing concerns about
23 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
24 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
25 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
26 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
27 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
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1 from contamination, to allow consumers to make informed choices about the products
2 they buy, and to enable persons to protect themselves from toxic chemicals as they see
3 fit.

4 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to
5 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
6 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
7 chemicals and chemical families. Proposition 65 imposes warning requirements and
8 other controls that apply to Proposition 65-listed chemicals.

9 13. All businesses with ten-(10) or more employees that operate or sell products in California
10 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
11 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
12 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
13 reasonable" warnings before exposing a person, knowingly and intentionally, to a
14 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

15 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
16 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
17 "Threaten to violate" means "to create a condition in which there is a substantial
18 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
19 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
20 recoverable in a civil action. *Health & Safety Code* Section 25249.7(b).

21 15. Plaintiff identified certain practices of manufacturers and distributors of products bearing
22 Di(2-ethylhexyl)phthalate ("DEHP") of exposing, knowingly and intentionally, persons
23 in California to the Proposition 65-listed chemicals of such products without first
24 providing clear and reasonable warnings of such to the exposed persons prior to the time
25 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

26 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
27 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
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1 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
2 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP
3 became fully subject to Proposition 65 warning requirements and discharge prohibitions.
4 17. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
5 known to the State to cause reproductive and developmental toxicity (*Cal. Code Regs. tit.*
6 *27, § 27001(c)*). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
7 twenty (20) months after addition of DEHP to the list of chemicals known to the State to
8 cause reproductive and developmental toxicity, DEHP became fully subject to
9 Proposition 65 warning requirements and discharge prohibitions.

10 **SATISFACTION OF PRIOR NOTICE**

11 18. On or about August 21, 2019 Plaintiff gave notice (AG2019-01626) of alleged violations
12 of Health and Safety Code Section 25249.6, concerning consumer products exposures
13 subject to a private action to GROCERY OUTLET, and to the California Attorney
14 General, County District Attorneys, and City Attorneys for each city containing a
15 population of at least 750,000 people in whose jurisdictions the violations allegedly
16 occurred, concerning Auto Accessories containing DEHP.

17 19. Before sending the notices of alleged violation, Plaintiff investigated the consumer
18 products involved, the likelihood that such products would cause users to suffer
19 significant exposures to DEHP, and the corporate structure of each of the Defendants.

20 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
21 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
22 Plaintiff who executed the certificate had consulted with at least one person with relevant
23 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
24 subject Proposition 65-listed chemical of this action. Based on that information, the
25 attorney for Plaintiff who executed the Certificate of Merit believed there was a
26 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
27 to the Certificate of Merit served on the Attorney General the confidential factual
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1 information sufficient to establish the basis of the Certificate of Merit.

2 21. Plaintiff's notice of alleged violations also included a Certificate of Service and a
3 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
4 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

5 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
6 gave notices of the alleged violations to GROCERY OUTLET, and the public
7 prosecutors referenced in Paragraph 18.

8 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
9 any applicable district attorney or city attorney has commenced and is diligently
10 prosecuting an action against the Defendants.

11 **FIRST CAUSE OF ACTION**

12 (By CONSUMER ADVOCACY GROUP, INC. and against GROCERY OUTLET,
13 and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and
14 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

15 **Auto Accessories**

16 24. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 23 of this complaint as though fully set forth herein.

18 25. Each of the Defendants are, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of EMERGENCY CAR KITS, including but not limited
20 to "EMERGENCY CAR KIT;" "SILVER ONE INTERNATIONAL;" "Manufactured for
21 Silver One Intl. One Intl. NY, NY 10018;" "Made in China;" "8 48496 03545 4"
22 ("EMERGENCY CAR KIT".)

23 26. EMERGENCY CAR KIT contains DEHP.

24 27. Defendants knew or should have known that DEHP has been identified by the State of
25 California as a chemical known to cause cancer and reproductive toxicity and therefore
26 was subject to Proposition 65 warning requirements. Defendants were also informed of
27 the presence of DEHP in EMERGENCY CAR KIT within Plaintiff's notice of alleged
28 violations further discussed above at Paragraph 18.

28 28. Plaintiff's allegations regarding EMERGENCY CAR KIT concern "[c]onsumer products

1 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
2 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
3 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
4 25602(b). EMERGENCY CAR KIT are consumer products, and, as mentioned herein,
5 exposures to DEHP took place as a result of such normal and foreseeable consumption
6 and use.

7 29. Plaintiff is informed, believes, and thereon alleges that between August 21, 2016, and the
8 present, each of the Defendants knowingly and intentionally exposed their employees and
9 California consumers and users of EMERGENCY CAR KIT, which Defendants
10 manufactured, distributed, or sold as mentioned above, to DEHP, without first providing
11 any type of clear and reasonable warning of such to the exposed persons before the time
12 of exposure. Defendants have distributed and sold EMERGENCY CAR KIT in
13 California. Defendants know and intend that California consumers will use and consume
14 EMERGENCY CAR KIT, thereby exposing them to DEHP. Defendants thereby violated
15 Proposition 65.

16 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.
17 Persons sustain exposures by handling EMERGENCY CAR KIT without wearing gloves
18 or any other personal protective equipment, or by touching bare skin or mucous
19 membranes with gloves after handling EMERGENCY CAR KIT, as well as through
20 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in
21 particulate matter dispersed from EMERGENCY CAR KIT.

22 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of
23 Proposition 65 as to EMERGENCY CAR KIT have been ongoing and continuous to the
24 date of the signing of this Complaint, as Defendants engaged and continue to engage in
25 conduct which violates Health and Safety Code Section 25249.6, including the
26 manufacture, distribution, promotion, and sale of EMERGENCY CAR KIT, so that a
27 separate and distinct violation of Proposition 65 occurred each and every time a person
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1 was exposed to DEHP by EMERGENCY CAR KIT as mentioned herein.

2 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
3 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
4 violations alleged herein will continue to occur into the future.

5 33. Based on the allegations herein, Defendants are liable for civil penalties of up to
6 \$2,500.00 per day per individual exposure to DEHP from EMERGENCY CAR KIT,
7 pursuant to Health and Safety Code Section 25249.7(b).

8 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
9 filing this Complaint.

10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

- 12 1. A permanent injunction mandating Proposition 65-compliant warnings;
13 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
14 3. Costs of suit;
15 4. Reasonable attorney fees and costs; and
16 5. Any further relief that the court may deem just and equitable.

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18 Dated: November 13, 2019

YEROUSHALMI & YEROUSHALMI

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21 BY: 

22 Reuben Yeroushalmi
23 Attorneys for Plaintiff,
24 Consumer Advocacy Group, Inc.
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